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OFFICE OF PETITIONS

In re Application of :
Lee et al. : DECISION ON PETITION
Application No. 10/801,208 :
Filed: March 16, 2004 :
Atty Docket No. 5649-1277 :

This is a decision on the "PETITION TO ACCORD THE PROPER FILING DATE," filed June 30, 2004, requesting that the above-identified application be accorded a filing date of March 16, 2004, rather than the presently accorded filing date of March 17, 2004. The petition was recently forwarded to the undersigned for consideration.

Petitioner maintains, in essence, that the above-identified application was deposited in compliance with 37 CFR §1.10 on March 16, 2004, and thus, is entitled to a filing date of March 16, 2004. Petitioner indicates that the discrepancy between the date of deposit and the filing date accorded was discovered upon receipt of the filing receipt, which showed a filing date of March 17, 2004. However, petitioner also acknowledged receipt of a return postcard, showing a date-stamp of receipt of March 16, 2004 for the original application papers. The petition was filed promptly after receipt of the filing receipt. In support thereof, petitioner submits a true and accurate copy of the Cover Sheet for the Application showing the Express Mail mailing label No. EV381444019US; a copy of their return postcard receipt; and a true and accurate copy of the Express Mail mailing label used, along with a copy of the USPS Track and Confirm Record from the USPS web page, showing "acceptance" with the USPS at 5:53 pm on March 16, 2004.

Having reviewed the evidence, it is concluded that petitioner has shown a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by other official USPS notation. The petition was filed promptly within the meaning of §1.10(c)(1). The transmittal sheet as submitted on petition with the Express Mail number thereon is a true copy of the transmittal of record and identifies the correspondence currently accorded a filing date of March 16, 2004. Thus, petitioner has shown that Express Mail No. EV381444019US was placed on the correspondence prior to the original mailing date. A review of the true copy of the Express Mail mailing label further reveals that the "date-in" entered by the USPS is March 16, 2004. In addition, the Express Mail mailing label bears an official USPS date-stamp of March 16, 2004. Moreover, a review of the USPS Track and Confirm Record and the return postcard further corroborate that the application was deposited on March 16, 2004.

In view thereof, the petition is GRANTED.

No petition fee is necessary.

It is noted that prior to a decision being rendered on this petition, the filing date of this application was corrected to March 16, 2004. Accordingly, no further action is required.

The application is being examined in Technology Center AU 2822.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
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Office of Petitions